IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Anil Singhvi. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 749/2005
for quashing the FIR No.139/2005, Police Station, Bhupalpura, Udaipur.

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Date of Order: August 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pushpendra Singh, the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
R.S. Chundawat, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short,"the Code" hereinafter), the petitioner seeks quashing of the FIR No. 139/2005, Police Station, Bhupalpura, Udaipur, lodged by the non-petitioner Nbo.2.

I have heard learned counsel for the parties. Carefully gone through the FIR in question as also the complaint filed by the petitioner against the complainant/non-petitioner No.2 for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) before the Chief Judicial Magistrate, Udaipur on 8-6-2005 and the order

passed by the trial Court on the said complaint filed by the petitioner.

It is contended by the learned counsel for the petitioner that the complainant/non-petitioner No.2 issued two cheques bearing No. 212742 dated 25-4-2005 and 212743 dated 27-4-2005 for the sum of Rs.2 lac and 3 lac respectively against the debt as the complainant/non-petitioner No.2 and the petitioner were having good business relations and on various occasions, the complainant/non-petitioner No.2 took the loan from the petitioner and in order to repay the loan amount, the two cheques noticed above were given by the complainant/non-petitioner No.2 to the petitioner. The cheques, on being presented to the bank, were returned unpaid and dishonoured on account of "insufficient fund" to the account of the complainant/non-petitioner No.2. A notice demanding the cheques amount within fifteen days from the date of receipt of the notice was served on the complainant/non-petitioner No.2. The complainant/non-petitioner failed to pay the cheques amount within the stipulated period and thereupon the petitioner filed a complaint within the stipulated period of limitation under Section 138 of the Act, notice of which have been served on the complainant/non-petitioner and thereafter the complainant filed the instant FIR in order to counter the complaint filed by the petitioner and, therefore, the instant FIR is nothing but to pre-

empt the complaint filed by the petitioner under Section 138 of the Act against the complainant/non-petitioner No.2.

Learned counsel for the complainant/non-petitioner No.2 submits that two blank cheques and the stamps papers were handed over to the petitioner by the complainant/non-petitioner No.2, which have been misused by the petitioner by forging the cheques and as such the FIR discloses the commission of the cognizable offences by the petitioner.

It appears that in para No.2 of the FIR, the complainant/non-petitioner No.2 admitted that a complaint has been filed against him by the petitioner for dishonour of the cheques, however, there had been a compromise between the petitioner and the complainant/non-petitioner No.2 and in the compromise, the complainant gave two cheques duly signed by him, as also one stamp paper. It is the petitioner, who forged the cheques and the amount and thereafter presented the same to the bank, which were dishonoured and thereafter the petitioner sent the notice demanding the cheques amount on 19.5.2005 through his counsel Mr. Rajendra Joshi, whereas the two cheques and the stamp papers, which were signed by the complainant, were entrusted to the petitioner and the petitioner, in order to grab the money, misused the cheques and the stamp paper and the petitioner, instead of returning the cheques to the complainant, misused the same.

Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & ors., (1999) 8 SCC 468; and the decisions of this Court in S.K. Gulati & ors. Vs. State of Rajasthan & Anr., 2004 (3) R.Cr.D. 250 Raj.), Mrs.Arnavaz (Anu) & ors. Vs. Alcobex Metals Ltd. & Anr., RLR 2005 (2) 424, Raghuveer Singh Vs. The State of Rajasthan & Anr., 2006 (2) CJ (Raj.) Cr. 851.

In Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & ors. (supra), on the similar facts, the Hon'ble Supreme Court held that the High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of the process of Court. Finding no justification for interference with the order of the High Court, the appeal was dismissed. It was a case where a complaint under Section 138 of the Act was filed against the first informant and thereafter the accused in the complaint case instituted the criminal proceedings with an ulterior motive for wrecking vengeance and, therefore, the High Court came to the conclusion that allowing the criminal proceedings to continue would result in manifest injustice and as such quashed the FIR. The order of the High Court was maintained by the Hon'ble Supreme Court.

Relying on this decision, this Court, in S.K. Gulati & ors. Vs. State of Rajasthan & Anr. (supra) held as under:-

> "The attendant circumstances in the instant case indicate that the second respondent has filed the instant complaint with an ulterior motive to pre-empt the filing of the criminal complaint against him under Section 138 and 141 of the Negotiable Instrument Act which is pending in the Court of Metropolitan Magistrate at Dadar, Mumbai. Even taking the allegations made in the complaint on its face value it does not satisfy the essential ingredients of offence under Sections 379 and 420 IPC. In these fact and circumstances of the case to continue the criminal proceedings under the impugned order against the petitioners in the Court of Judicial Magistrate, Nathdwara tantamount to an abuse of the process of the Court. Thus, it is considered fit case to interfere with the proceedings pending in the Court of Judicial Magistrate, First Class, Nathdwara to prevent the abuse of process of the Court by quashing the same."

In Mrs. Arnavaz (Anu) & ors. Vs. Alcobex Metals Ltd.& Anr. (supra), the Court held as under:-

> "Thus, it clearly emerges that to exercise powers under Section 482 Cr.P.C., the complaint in its entirety must be examined on the basis of the allegation made therein. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. If the allegations made in the complaint do not make out any case against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against such accused. In such cases, with a view to prevent the abuse of process of the Court, the High Court would be competent to quash the complaint or the FIR to prevent the abuse of process of the Court to secure the ends of justice."

In Raghuveer Singh Vs. The State of Rajasthan & Anr. (supra), on similar facts, relying on the decision of the Hon'ble Supreme Court in Sunil Kumar Vs. Escorts Vamaha

Motors Ltd. & ors. (supra) and on NEPC Micon Ltd. & ors. Vs. Magma Leasing Limited, 1999 Cr.L.R.(SC) 336, this Court held that prima facie offence under Section 138 of the Act is made out against the petitioner. The complaint of the non-petitioner No.2 Mukhtiar Singh for the offence under Section 138 of the Act is prior in time which clearly goes to show that the complaint filed by the petitioner against the non-petitioner is to pre-empt the filing of the complaint by the non-petitioner under Section 138 of the Act against the petitioner and, therefore, the revisional court rightly set aside the order taking cognizance passed by the trial Court.

Keeping in view the decisions of the Hon'ble Supreme Court and of this Court, as noticed above, and the facts of the instance case, it is clear that the complaint has been filed by the petitioner against the non-petitioner No.2 under Section 138 of the Act on 8-6-2005 and prior to filing of th complaint, a notice was sent to the complainant/non-petitioner No.2 demanding the amounts of two cheques issued by th non-petitioner on 25-4-2005 and 27-4-2005 for the sum of Rs.2 lac and 3 lac respectively as both the cheques were dishonoured and returned unpaid on 29-4-2005 on account of insufficient funds to the account of the complainant/non-petitioner No.2, notice demanding the cheques amount was sent by the petitioner to the non-petitioner No.2 which was received by the complainant/non-

petitioner No.2 and within fifteen days from the date of notice, the complainant/non-petitioner No.2 failed to pay the amount of both the cheques and thereafter the complaint was filed. Thus, the complainant/non-petitioner No.2 knew that a criminal complaint has been instituted against him by the petitioner on account of dishonour of the cheques issued by him and thereafter on 14-6-2005, the non-petitioner No.2 fled the instant FIR stating therein that the cheques duly signed by him were entrusted by him to the petitioner. This is the defence available to the complainant/non-petitioner No.2 in the proceedings in criminal complaint under Section 138 of the Act and, thus, the FIR is nothing but a defence to the criminal case instituted against him by the petitioner and, therefore, to allow the FIR and any investigation thereunder would tantamount to abuse of process of the Court and, therefore, to secure the ends of justice, the FIR deserves to be quashed.

In the result, the criminal miscellaneous petition is allowed. The FIR No. 139/2005, Police Station, Bhupalpura, Udaipur for the offences under Sections 420, 406, 467, 468 and 471 IPC lodged by the non-petitioner No.2 against the present petitioner is quashed.

(H.R. PANWAR), J.

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